

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF MALAYSIA CONCERNING THE ESTABLISHMENT OF THE MALAYSIAN-AMERICAN COMMISSION ON EDUCATIONAL EXCHANGE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA acting through the **DEPARTMENT OF STATE** and **THE GOVERNMENT OF MALAYSIA** as represented by the **MINISTRY OF HIGHER EDUCATION OF MALAYSIA** (hereinafter referred to as "the Parties");

Recognizing that a variety of educational exchanges and visits are carried out between the Parties;

Considering the mutual benefit derived from such educational exchange programs and the desire of the Parties to cooperate further in the financing and operating of such programs and to strengthen cooperative relations between the Parties;

Desiring to continue and expand programs to promote greater mutual understanding between the citizens of Malaysia and the United States by a wider exchange of knowledge and professional talents through educational activities;

Recognizing the need to reflect more accurately the current relationship between the two countries; and

Recognizing the importance of the principles of sovereignty, equality and mutual benefit;

HAVE AGREED as follows:

ARTICLE I

1. The commission known as the Malaysian-American Commission on Educational Exchange (hereinafter referred to as "the Commission"), established by virtue of the Agreement Between the Government of the United States of America and the Government of the Federation of Malaya for Financing Certain Educational Exchange Programs signed January 28, 1963 and continued by virtue of the Agreement Between the Government of the United States of America and the Government of Malaysia Concerning the Establishment of the Malaysian-American Commission on Educational Exchange signed August 3, 1995, is hereby further continued.
2. The Commission shall continue to be recognized by the Parties as a bi-national organization created and established to facilitate and administer a program of educational exchanges between Malaysia and the United States of America by providing educational and training opportunities for their respective citizens (hereinafter referred to as "the Program").
3. The Program shall be financed with funds made available to the Commission by or through the Parties, and with funds of contributions received from other public and private sources, which support the purposes of this Agreement.
4. The Commission shall continue to enjoy autonomy of management and administration in accordance with the terms of this Agreement. It shall be sensitive to the needs and aspirations of both Parties and shall make every effort to respond expeditiously to those needs and aspirations.

5. The Commission, its assets and income, its Executive Director, and its grant recipients, shall be exempt from taxes to the extent provided by the Internal Revenue Code of the United States of America ("the Code") and the Income Tax Act of Malaysia ("the Act"). Contributions to the Commission shall be deductible to the extent provided in the Code and the Act.

ARTICLE II

The funds made available to the Commission under this Agreement shall be used in accordance with the provisions of this Agreement and for the purposes of:

1. financing studies, research, instruction, teaching, professional exchanges, human resource development, and other educational activities of or for citizens of Malaysia in the United States of America and of or for citizens and nationals of the United States of America in Malaysia;
2. financing other related educational and professional programs and activities; and
3. financing the Program expenses, administrative costs, maintenance and operational fees of the Commission.

ARTICLE III

The Commission shall exercise all powers necessary to achieve the purposes set forth in Article II of this Agreement and, in order to do so, shall:

1. engage an Executive Director, who shall:

- a) be in charge of the administrative work of the Commission and make recommendations to the Board established under Article V;
- b) hire such other clerical and administrative staff as may be necessary;
- c) fix and pay the salaries and wages thereof; and
- d) incur such other expenses as may be necessary for the administration of the Commission.

The Executive Director shall be appointed and renewed for such terms of duty as the Board established under Article V deems appropriate;

- 2. plan, adopt and carry out the Program and related activities in accordance with the purposes of this Agreement;
- 3. develop a comprehensive proposal detailing the scope of the Commission's programs for the following fiscal year, the academic areas of concentration, and the types of grants and similar general guidelines for approval by the Parties;
- 4. prepare each year an announcement of, and application instructions for, a national public competition in Malaysia, setting forth the details of the Commission's activities, including procedures for the distribution to, and submission of applications by, the public for consideration by the Board established under Article V and/or review bodies which it may designate;

5. recommend to the J. William Fulbright Foreign Scholarship Board of the United States of America (hereinafter referred to as "the Fulbright Scholarship Board") students, research scholars, teachers, instructors, professors, artists, professionals, and other such candidates with appropriate qualifications, who are citizens of Malaysia, to participate in the Program;
6. recommend to the relevant organizations in Malaysia students, research scholars, teachers, instructors, professors, artists, professionals and other such candidates with appropriate qualifications, who are citizens or nationals of the United States of America, to participate in the Program;
7. recommend to the Fulbright Scholarship Board such qualifications for the selection of participants in the Program as it may deem necessary and appropriate for achieving the purposes and objectives of this Agreement;
8. authorize the making of grants and the disbursement and advancement of funds necessary for the carrying out of programs authorized under Article II, including payment for transportation, tuition, registration and laboratory fees, maintenance and other expenses incident thereto;
9. receive donations from public and private sources for projects and activities consonant with the purposes of the Commission as established in this Agreement, such donations to be tax exempt to the extent permissible under the Code and the Act. The members of the Commission shall abide by the laws, regulations and procedures of their respective Governments with regard to their participation in the acceptance of donations; and

10. administer, or assist in administering, or otherwise facilitate the implementation of, other educational exchange programs that contribute to achieving the purposes of this Agreement but are not financed by funds made available under this Agreement, provided that no objection is interposed by either Party to the Commission's role therein, which role shall be fully described in annual or special reports referred to in Article VIII, paragraph 1, below.

ARTICLE IV

The Parties shall share the expenses of the Commission and make annual allocations of funds or contributions in kind to the Commission for the purposes of this Agreement. The amount of such annual allocations shall be subject to the funds available to the Parties in accordance with their respective laws and regulations.

ARTICLE V

1. The Commission shall be governed by a board ("the Board") consisting of ten (10) members, five of whom shall be citizens of Malaysia (hereinafter referred to as "the Malaysian members") and five of whom shall be citizens of the United States of America (hereinafter referred to as "the American members"). In addition, the Minister of Higher Education of Malaysia and the Chief of the Diplomatic Mission of the United States of America to Malaysia shall be Honorary Co-Chairpersons of the Commission.
2. A Chairperson shall be elected by the Board from its own members for a period of service of one year, and shall be eligible for reappointment provided that the same Chairperson shall not serve more than two years consecutively. The Chair shall be assumed alternately by a citizen of

Malaysia and a citizen of the United States of America.

3. Each member of the Board shall have one vote. Decisions of the Board at any meeting shall be made by a majority of members present. If the Board is divided, issues shall be discussed further in an attempt to reach consensus or a majority. The Chairperson shall have an original vote, and in the event of equality of votes, shall exercise an additional casting vote.
4. The Malaysian members of the Board shall be appointed and may be removed by the Minister of Higher Education of Malaysia. At least two of the Malaysian members shall be representatives of the Government of Malaysia. The American members of the Board shall be appointed and may be removed by the Chief of the Diplomatic Mission of the United States of America to Malaysia. At least two of the American members shall be officers of the Diplomatic Mission of the United States of America to Malaysia. The remaining members of the Board shall be drawn from the educational, corporate and professional communities of the two countries.
5. Board members shall serve from the time of their appointment until December 31st of the following year and shall be eligible for reappointment; however, no member shall serve for more than six consecutive years (three terms). To maintain continuity, where possible the terms of appointment for the Board members shall be staggered so the terms of service for some Board members expire in even-numbered years and for others in odd-numbered years. Vacancies by reason of resignation, expiration of service or otherwise shall be filled in accordance with the preceding paragraph.
6. The Chairperson of the Board shall appoint a Treasurer and Alternate Treasurer of the Commission. The Treasurer shall be appointed from

among the American members and the Alternate Treasurer from among the Malaysian members. The Treasurer, and in his or her absence the Alternate Treasurer, shall be authorized to receive and deposit funds in depositories designated by the Commission and to perform financial management duties as designated by the Commission.

7. The members of the Board shall serve without remuneration, but the Commission may defray the necessary expenses of the members in attending the meetings of the Commission and in performing other official duties arranged by the Commission.

ARTICLE VI

1. The Board shall adopt such by-laws and appoint such committees as it may deem necessary for the conduct of the affairs of the Commission. Committee reports, if any, shall be distributed to the Parties.
2. The Board shall meet a minimum of four times each calendar year.

ARTICLE VII

The principal office of the Commission shall be in Kuala Lumpur, however, meetings of the Board and any of its committees may be held in such other places as the Board may determine. The activities of any of the Commission's Board members, officers or staff may be carried on at such places as may be approved by the Board.

ARTICLE VIII

1. The Commission shall report annually on its activities to the Parties. Such annual reports shall be made in such form, and cover such content, as may be required by the Parties. Special reports may be made at the discretion of the Commission or at the request of either Party.
2. Annual audits of the accounts of the Commission, to be made by an auditor selected jointly by the Parties, shall be submitted to the Parties. If so requested, the Commission shall also permit other auditing of its accounts by representatives of either or both of the Parties.
3. In the budgeting and accounting of funds and in financial and program reporting to the Government of the United States of America, the Commission shall follow the U.S. Department of State's *Manual for Binational Commissions and Foundations*.

ARTICLE IX

1. The Commission shall propose its annual budget to the Parties.
2. The Parties shall, within the limits of their respective budgetary appropriations for this purpose and taking into account funds donated by other sources or income therefrom, make contributions to the Commission. The use of contributions from the Parties shall be for purposes authorized by their respective laws.
3. All commitments, obligations and expenditures to be authorized by the Board shall be subject to the annual budget of the Commission.

ARTICLE X

1. In order to ensure that cooperation in education extends beyond the activities fostered by the Commission, the Parties shall encourage and facilitate the further development of contacts and exchanges, both through official channels and privately, between the citizens of the two countries, with a view toward deepening knowledge and understanding of each other's history, civilization, institutions and literature.
2. Each Party shall encourage and facilitate access on the part of scholars, artists and other professionals of the other country to its monuments, collections, archives, libraries, laboratories, and other institutions of learning. Similarly, each Party shall use its best efforts to assist citizens of the other country, engaged in activities pursuant to this Agreement, in obtaining favorable treatment with respect to entry, travel, residence and exit as is consistent with its national laws and regulations.

ARTICLE XI

1. On behalf of the Government of Malaysia, the executive agency for this Agreement shall be the Ministry of Higher Education of Malaysia; on behalf of the Government of the United States of America, the executive agency for this Agreement shall be the U. S. Department of State. The U. S. Department of State may designate the Embassy of the United States of America in Malaysia to act on its behalf as executive agency for certain matters.
2. The two executive agencies shall communicate with one another to review and assist in the implementation of this Agreement, and may meet periodically as they may agree. They may reach understandings and

exchange information with one another regarding aspects of the Commission's work that are within their purview under the terms of this Agreement, and regarding activities described in Article X, above. Such discussions may be held at the request of either Party, either in Kuala Lumpur or Washington, D.C.

ARTICLE XII

1. The Parties shall make every effort to facilitate the work of the Commission and the carrying out of the activities covered by this Agreement, and to resolve problems that may arise in its implementation.
2. The obligations of the Parties and the activities carried out under this Agreement shall be subject to the respective national laws, rules and regulations of each country as applicable, including the availability of funds.

ARTICLE XIII

1. The protection of intellectual property rights shall be enforced in conformity with the respective national laws, rules and regulations of each Party and with international agreements in force between the Parties.
2. The use of the name and/or official emblem of either of the Parties on any publication, document and/or paper is prohibited without prior written approval of the affected Party.
3. Notwithstanding anything in paragraph 1 above, the intellectual property rights in respect of any technological development, products and services

development, carried out:

- (i) jointly by the Parties of research results obtained through the joint activity effort of the Parties, shall be jointly owned by the Parties in accordance with the terms to be mutually agreed upon; and
- (ii) solely and separately by the Party of the research results obtained through the sole and separate effort of the Party, shall be solely owned by the Party concerned.

ARTICLE XIV

1. Each Party shall undertake to observe the confidentiality and secrecy of documents, information and other data received or supplied to the other Party during the period of the implementation of this Agreement or any other agreements made pursuant to this Agreement, to the extent permissible by law.
2. Both Parties agree that the provisions of this Article shall continue to be binding between the Parties notwithstanding the termination of this Agreement.

ARTICLE XV

Each Party reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Agreement, which suspension shall take effect immediately after notification has been given to the other Party, in writing, through diplomatic channels.

ARTICLE XVI

Any difference or dispute between the Parties concerning the interpretation, implementation, and/or application of any of the provisions of this Agreement shall be settled amicably through mutual consultation and/or negotiations between the Parties through diplomatic channels, without reference to any third party or international tribunal.

ARTICLE XVII

1. This Agreement shall enter into force upon signature, with effect from August 3, 2005 ("the Effective Date").
2. The Parties agree that the duration of this Agreement shall be for a period of ten (10) years from the Effective Date.
3. This Agreement may be renewed for an additional ten (10) years by agreement of the Parties through an exchange of diplomatic notes.
4. This Agreement may also be amended by mutual written agreement of the Parties.

ARTICLE XVIII

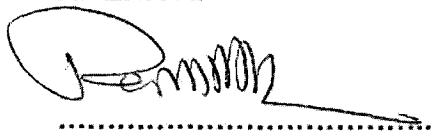
1. Either Party may give written notice to the other of its intention to terminate this Agreement, by exchange of diplomatic notes, in which case this Agreement shall be terminated on December 31st of the calendar year following the date of such notice.

2. Upon termination of this Agreement, funds and property of the Commission shall become property of the Parties in proportion to their respective contributions to the Commission, subject to such conditions, limitations and liabilities as may have been imposed thereon prior to the termination of this Agreement.

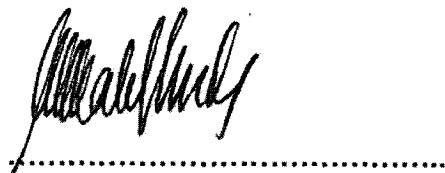
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

Done at Kuala Lumpur, this20th..... day of September..... 2010, in the English language.

FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA:

A handwritten signature in black ink, appearing to read "J. M. M." followed by a long, sweeping line.

FOR THE GOVERNMENT OF
MALAYSIA:

A handwritten signature in black ink, appearing to read "Malaysia" followed by a long, sweeping line.